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10/805,870

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Eric B. Watson

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CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE, WA 98101-2347

EXAMINER

POUNCIL, DARNELL A

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/805,870	Applicant(s) WATSON ET AL.	
	Examiner DARNELL POUNCIL	Art Unit 4176	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/21/05, 9/02/04, 9/23/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 19 & 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 19 & 20 provides for the use of “data format”, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-16 and 18-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Kamangar et al. (US 2003/0046161).

5. Kamangar discloses a method for optimizing the use of paid placement space in a search results Web page, the method comprising:

monitoring a performance of a paid listing placed for a fee in a search results Web page; (See Para. 12)

receiving conversion data associated with the paid listing, the conversion data representing sales revenue resulting from a user referral to a destination Web site associated with the paid listing; (See Para. 13)

determining a paid yield associated with the paid listing based on the latest performance and conversion data, wherein the paid yield represents sales revenue resulting from all user referrals to the destination Web site over a period of time; and (See Para. 13)

placing the paid listing in the search results Web page based on the paid yield.
(See Fig. 3 & Para. 4)

6. Regarding claim 2, Kamangar et al. discloses, wherein the user referral to the destination Web site occurs when a user clicks on the paid listing to navigate to the destination Web site, and the performance of the paid listing is a click-through rate, where the click-through rate is derived from a number of times the paid listing is placed in the search results Web page, as compared to a number of times the user clicks on the paid listing after being displayed.

(See Para 98 and Para. 249)

7. Regarding claim 3, Kamangar et al. discloses, wherein the placement fee is a percentage of the paid yield associated with the paid listing. (See Para. 27)

8. Regarding claim 4, Kamangar et al. discloses, further comprising selecting the paid listing for placing in the search results Web page based on the paid yield.

(See Para 27)

9. Regarding claim 5, Kamangar et al. discloses, wherein the conversion data includes data that captures a monetized event that occurred as a result of the user referral to the destination Web site associated with the paid listing, the monetized event including at least one of a sale of a product, a sale of a service, and another referral to an entity associated with the destination Web site, the entity including at least one of an individual, a business, and another Web site.(See Para 45 & 61)

10. Regarding claim 6, Kamangar et al. discloses, wherein placing the paid listing in the search results Web page based on the paid yield includes placing the paid listing having a higher paid yield before the paid listing having a lower paid yield. (See Fig. 3)

11. Regarding claim 7, Kamangar et al. discloses wherein selecting the paid listing for placing in the search results Web page based on the paid yield includes selecting the paid listing having a higher paid yield over the paid listing having a lower paid yield.(See Fig 3. or fig 4 Kamangar)

12. Regarding claim 8, Kamangar et al. discloses, wherein the conversion data includes a dollar value associated with the monetized event.(See Para. 26)

13. Regarding claim 9, Kamangar et al. discloses wherein determining a paid yield associated with the paid listing based on the latest performance and conversion data, includes calculating a conversion rate, where the conversion rate equals the total dollar value associated with the monetized events occurring as the result of user referrals to the destination Web site divided by the total number of user referrals over the period of time.(See Para. 13)

14. Regarding claim 10, Kamangar et al. discloses where the period of time is the time it takes to achieve a predefined number of placements of the paid listing in the search results Web page.

.(See Para. 13 - 15)

11. Regarding claim 11, Kamangar et al. discloses wherein the predefined number of placements is equal to a number of impressions used to measure the performance of the paid listing. (See Para 49,)

15. Regarding claim 12, Kamangar et al. discloses, a paid listing yield optimization system comprising: a performance data repository containing performance data for a paid listing placed in a search results Web page, the performance data indicating how many times users visited a destination Web site by clicking on the paid listing; a conversion data repository containing conversion data for the paid listing, the conversion data indicating how much money was generated when a user visited the destination Web site; and a processor to calculate a paid yield associated with the paid listing based on current performance and conversion data, the paid yield indicating how much money was generated when users visited the destination Web site over a period of time, and to place the paid listing on the search results Web page in exchange for a portion of the paid yield.

(See Para 40-42, Kamangar)

16. Regarding claim 13, Kamangar et al. discloses, wherein the processor is to further select which paid listing to place on the search results Web page in accordance with the latest paid yield. (See Figure 2 & fig 6)

17. Regarding claim 14, Kamangar et al. discloses, wherein the performance data further indicates how many times the processor placed the paid listing on the search results Web page, and the processor measures a performance of the paid listing by comparing the number of visits to the number of placements. (See Para. 33 Kamangar)

18. Regarding claim 15, Kamangar et al. discloses, wherein to calculate the paid yield associated with the paid listing includes to calculate a conversion rate equaling an average amount of money generated per visit and to multiply the conversion rate by the performance. (See Para 46 & 47, Kamangar)

19. Regarding claim 16, Kamangar et al. discloses, wherein the processor receives updates to the conversion data repository from the destination Web site. (See Para. 40 & Fig. 3, Kamangar)

20. Regarding Claim 18, Kamangar et al. discloses, wherein the processor receives updates to the conversion data repository from an intelligent agent initiated by the processor when the user clicked on the paid listing to visit the destination Web site. (See Para. 33)

21. Regarding Claim 19, Kamangar et al. discloses, wherein the conversion data repository includes data associated with different destination Web sites, but conforming to a single common data format (inherently).

22. Regarding Claim 20, Kamangar et al. discloses, wherein the conversion data repository includes data associated with different destination Web sites, each destination Web site using a data format specific to that destination Web site (inherently).

23. Regarding Claim 21, Kamangar et al. discloses, a computer-accessible medium having instructions for making optimal use of paid placement space on a search results user interface, the instructions comprising:

record a number of times a user navigates from a paid listing placed in a search results user interface to a destination Web site associated with the listing;

capture an amount of purchases generated at the destination Web site as a result of the user navigation;

calculate a paid yield of the paid listing based on the number of user navigations and amount of purchases; and place the paid listing on the search results user interface in exchange

for a share of the paid yield. (See Claims. 43 & 44)

24. Regarding Claim 22, Kamangar et al. discloses, the computer-accessible medium of Claim 21, further comprising an instruction to record a number of times the paid listing is placed in the search results user interface and an instruction to measure a performance of the paid listing where the performance is a comparison between the number of times the user navigated to the destination Web site and the number of times the paid listing was placed. (See Claims. 43 & 44)

25. Regarding Claim 23, Kamangar et al. discloses, the computer-accessible medium of Claim 22, wherein the instruction to calculate the paid yield includes an instruction to calculate a conversion rate associated with the paid listing that indicates an average amount of purchases per user navigation and the paid yield equals the conversion rate multiplied by the measured performance. (See Claims. 43 & 44)

26. Regarding Claim 24, Kamangar et al. discloses, the computer-accessible medium of Claim 21, wherein the instruction to capture an amount of purchases generated at the destination Web site as a result of the user navigation includes an instruction to generate an intelligent agent when the user navigates to the destination Web site, where the intelligent agent tracks user activity at the destination Web site and reports back the amount of the user's purchase. (See

Claims. 43 & 44)

27. Regarding Claim 25, Kamangar et al. discloses, the computer-accessible medium of Claim 21, wherein the instruction to capture an amount of purchases generated at the destination Web site as a result of the user navigation includes an instruction to receive data reporting the amount of the user's purchase. (See Claims. 43 & 44)

28. Regarding Claim 26, Kamangar et al. discloses, the computer-accessible medium of Claim 25, wherein the reported data is generated by the destination Web site. (See Claims. 43 & 44)

29. Regarding Claim 27, Kamangar et al. discloses the computer-accessible medium of Claim 25, wherein the reported data is generated by a third party vendor that tracks purchase activity at the destination Web site.. (See Claims. 43 & 44)

30. Regarding Claim 28, Kamangar et al. discloses, the computer-accessible medium of Claim 25, wherein the reported data is generated in a common format irrespective of the destination Web site with which the data is associated. (See Claims. 43 & 44)

31. Regarding Claim 29, Kamangar et al. discloses, the computer-accessible medium of Claim 25, wherein the reported data is generated in a common format irrespective of whether the

data is generated by one of a destination Web site, an intelligent agent, and a third party vendor.

(See Claims. 43 & 44)

32. Regarding Claim 30, Kamangar et al. discloses, the computer-accessible medium of Claim 21, wherein the instruction to capture an amount of purchases generated at the destination Web site as a result of the user navigation includes capturing a monetized event that occurred as a result of the user navigating to the destination Web site, the monetized event including at least one of a sale of a product, a sale of a service, and a user navigation to an entity associated with the destination Web site, the entity including at least one of an individual, a business, and another Web site. (See Claims. 43 & 44)

Claim Rejections - 35 USC § 103

33. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

34. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

35. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kamangar et al. (US 2003/0046161).

36. Kamangar et al. disclose a method for optimizing the use of paid placement space in a search results Web page, as applied above in the rejection of claim 12 under 35 U.S.C. 102(b), but Kamangar et al. do not explicitly disclose that the processor receives updates to the conversion data repository from a third party vendor that tracks how much money was generated when the user visited the destination Web site.

However, the use of a third-party vendor to track statistics at a website is certainly well known to those of ordinary skill in the art, and official notice to that effect is hereby taken.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Kamangar et al. so as to have a third party track statistics at the website, as is well known to do, in order to offload some of the administrative burden of managing the website onto an outsourced vendor, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Conclusion

37. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

38. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DARNELL POUNCIL whose telephone number is (571) 270-3509. The examiner can normally be reached on Monday to Thursday 8 to 5 ET.

39. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

40. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. P./
Examiner, Art Unit 4176

April 16, 2008

/Gerald J. O'Connor/
Supervisory Patent Examiner
Group Art Unit 4176